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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

PRIME PACIFIC INVESTMENTS, INC.,

Plaintiff and Appellant,

v.

HANMI BANK,

Defendant and Respondent.

2d Civil No. B150663  
(Super. Ct. No. BC225744)  
(Los Angeles County)

Prime Pacific Investments, Inc., (PPI) appeals a summary judgment in favor of Hanmi Bank (the Bank). We affirm.

FACTS

On March 1, 2000, PPI brought an action for declaratory relief and common count against the Bank. PPI alleged that the Bank breached "fiduciary and custodial obligations" and "standard banking loan customs and practices" during the refinancing of a loan applied for by PPI. PPI alleged that it paid a \$52,955 prepayment penalty to its prior lender, Bank of America, due to the Hanmi Bank's wrongful acts.

The Bank answered the complaint and then moved for summary judgment. Documents, discovery responses, and declarations offered in support of and in opposition to the summary judgment motion established this: On May 8, 1995, PPI obtained a loan

from Bank of America. The obligation was secured by a first trust deed against commercial real property in Culver City. The promissory note matured on June 31, 2002, and provided for a prepayment penalty if PPI repaid the obligation prior to the maturity date.

In August 1999, PPI sought to refinance the Bank of America obligation with Hanmi Bank. At the time, PPI mistakenly believed the Bank of America promissory note matured in February 2000, and that Bank of America would probably not exact a prepayment penalty. During the loan application process with Bank of America, PPI received conflicting information regarding the maturity date of the loan and a prepayment penalty. PPI stated during discovery that "there was a failure to notice the pre-payment clause in the Promissory Note."

In August 1999, Hanmi Bank agreed to lend PPI \$1 million to be secured by a trust deed against the Culver City commercial property. The parties did not open an escrow with an independent third party to process the refinancing.

Hanmi Bank requested a demand statement from Bank of America stating the amount necessary to satisfy PPI's obligation. On October 1, 1999, Bank of America responded and demanded a \$52,955 prepayment penalty and a \$250 prepayment fee. Hanmi Bank then disbursed funds to satisfy the Bank of America obligation, including the prepayment penalty. A "Disbursement Request and Authorization" executed by PPI distributed "\$989,338.90" to Bank of America, but it did not specifically list a prepayment penalty.

During the refinancing process, PPI was unaware that Bank of America demanded a prepayment penalty or that Hanmi Bank paid the prepayment penalty from the refinancing proceeds. Hanmi Bank did not provide PPI with an estimate of closing costs nor did it otherwise inform it of the prepayment penalty demanded by Bank of America.

In opposition to the summary judgment motion, PPI offered the declaration of Dave Brooks, the owner of an escrow company and an experienced escrow officer.

Brooks opined that "standard operating procedure and good business practice" required Hanmi Bank to inform PPI of the prepayment penalty.

Hanmi Bank objected to Brooks's declaration because he did not offer an expert opinion regarding banking practices. The trial court sustained the objection.

The trial court concluded that Hanmi Bank had no duty to inform PPI of the prepayment penalty. It then granted summary judgment in favor of Hanmi Bank. PPI appeals and contends there is a triable issue of material fact whether Hanmi Bank had a duty to inform it of the prepayment penalty.

### DISCUSSION

PPI argues that Hanmi Bank became a fiduciary with a duty to inform its borrower of a prepayment penalty "when [the Bank] assumed the . . . obligations [of an escrow]." It adds that "prudence and good business practice" also required Hanmi Bank to obtain PPI's approval prior to payment of the prepayment penalty, thereby placing Hanmi Bank on inquiry notice. PPI points out that Bank of America provided Hanmi Bank with two demand statements, nearly six weeks apart, with greatly differing prepayment penalties.

A defendant may obtain summary judgment by establishing "a complete defense" to a cause of action. (Code Civ. Proc., § 437c, subd. (o)(2); *Pensinger v. Bowsmith, Inc.* (1998) 60 Cal.App.4th 709, 718.) When reviewing a summary judgment, we exercise our independent judgment to determine whether the moving party is entitled to summary judgment as a matter of law. (*Pensinger v. Bowsmith, Inc.*, *supra*, 60 Cal.App.4th 709, 717-718.) In this task, we resolve any doubts in favor of the party resisting the summary judgment. (*Id.* at p.717.)

The trial court properly granted summary judgment because as a matter of law Hanmi Bank had no duty to PPI regarding the prepayment penalty due Bank of America.

As a general rule, there is no fiduciary relationship between a bank and its loan customers. (*Price v. Wells Fargo Bank* (1989) 213 Cal.App.3d 465, 476.)

"A debt is not a trust and there is not a fiduciary relation between debtor and creditor as

such. . . . The same principle should apply with even greater clarity to the relationship between a bank and its loan customers." (*Ibid.*) PPI has not set forth evidence tending to establish that its relationship with Hanmi Bank was more than a borrower-lender relationship.

The parties also agree that Hanmi Bank is a bank doing business under California and federal law. As such, it is exempt from the legal responsibilities concerning escrows. California Financial Code section 17006, subdivision (a), provides: "This division ['Escrow Law'] does not apply to: (a) Any person doing business under any law of this state or the United States relating to banks . . . ."

Moreover, federal laws regarding real estate transactions do not apply to PPI's commercial transaction with Hanmi Bank. (15 U.S.C. § 1601 et seq. [Federal Truth in Lending Act]; 12 U.S.C. § 2601 et seq. [Real Estate Settlement Procedures Act].)

For these reasons, the trial court properly granted summary judgment.

The judgment is affirmed. Appellant shall bear costs on appeal.

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GILBERT, P.J.

We concur:

COFFEE, J.

PERREN, J.

Paul H. Gutman, Judge

Superior Court County of Los Angeles

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Morton Minikes for Plaintiff and Appellant.

Kwank, Kim & Park, Tony K. Kim and Michael Schillaci for Defendant  
and Respondent.